MICHAEL F. AUTY

v.

PERNAS PLESSEY ELECTRONICS SDN. BHD.

HIGH COURT, SINGAPORE
FA CHUA J
[S. 580/82]
19 NOVEMBER 1987

LABOUR LAW: *Contract of employment - Whether contract was unlawfully terminated - Resignation - Whether resignation was voluntary.*

The plaintiff's claim is for damages for breach of contract of employment. The plaintiff was appointed General Manager of the defendant company a Malaysian-registered company for a period of three years commencing 1 September 1979. It was a term of the said Agreement that termination of employment would be on six month's notice on either side.

Upon a reorganisation Pernas Plessey (the defendant company) and Plessey Malaysia, the plaintiff was informed by the defendants sometime in April 1981 that he was no longer to be the General Manager of the defendants but was to be "an Advisor" to the defendants. The plaintiff handed the defendant a letter of resignation.

On 26 May 1981, after negotiations with the Financial Director, the plaintiff agreed to withdraw his resignation. Subsequently Mr. Quek offered the plaintiff the post of Consultant to the defendant's subsidiary company in Singapore. The plaintiff rejected the offer and accepted the benefits arising from the termination of the agreement.

The main issue in this case was whether the plaintiff resigned of his own accord or whether his employment was terminated by the defendants.

Held:
From the evidence given, it was clear that the plaintiff had resigned voluntarily from the defendant company and that he was paid up to 31 October 1986.

[Plaintiff's claim dismissed with costs.]

For the plaintiffs - Winston Tan; M/s. Ong & Tan & Nair
For the defendants - G. Sandosham (S. Asogan with him); M/s. George Sandosham & Co.

JUDGMENT

FA Chua J:

The plaintiff's claim is for damages for breach of contract of employment.

The plaintiff was appointed General Manager of the defendant company (a Malaysian-registered company) for a period of three years commencing 1 September 1979. It was a term of the said Agreement that termination of employment would be on six months' notice on either side.

There were the following interrelated Companies at the material time - Plessey Singapore Pte Ltd., Plessey Malaysia Sdn. Bhd., Pernas Plessey Sdn. Bhd., Pernas Engineering Sdn. Bhd. and Pernas Plessey Electronics Sdn. Bhd. (the defendants).

The defendants were a joint venture company between the Pernas group and Plessey Malaysia Sdn. Bhd. - the Pernas group owning 51% of the equity and Plessey Malaysia Sdn. Bhd. 49%. Plessey Malaysia Sdn. Bhd. managed the operation of the defendants which manufactured communications equipment for sale through Plessey Singapore Pte. Ltd. for the Singapore market and for sale through Plessey Malaysia Sdn. Bhd. for Malaysian market.

Mr. H.W. Langlois was the Managing Director of Plessey Singapore Pte. Ltd., Plessey Malaysia Sdn. Bhd. and the defendants. Mr. Quek Sin Pin was the Financial Director of Plessey Singapore Pte. Ltd. and Plessey Malaysia Sdn. Bhd.

The head office of the defendant company is in Kuala Lumpur. There was a branch office in Singapore which ceased operation on 1 July 1982. The head office continued in Kuala Lumpur.

Sometime in early April 1981, the plaintiff says that he was informed by the defendants that he was no longer to be the General Manager of the defendants and that forthwith he was to be "an Adviser" to the defendants.

On 26 May 1981, the plaintiff wrote to Mr. Langlois tendering his resignation. His letter (Ex P3) reads:

> Dear Mr. Langlois,
>
> **Reorganisation of Pernas Plessey**
>
> In early April 1981 you explained to me that there was going to be a complete re-organisation of both Pernas Plessey and Plessey Malaysia. Plessey, you informed me would be selling off some of its equity in P.P.E. to Pernas so that the current equity situation of 49% Plessey - 51% Pernas would become 30% Plessey 70% Pernas. Furthermore you told me that Plessey would be selling 70% of Plessey Malaysia also to Pernas and when this was completed the two companies would be merged to form one new company and at that time the name Plessey would be dropped from the new company's name.
>
> 2. With the recent statements in the Malaysian press of the Government's National aspirations none of the above came as any great surprise to me. What did come as a surprise was the new role that you had decided I should undertake. In conversations that you have had with me, my understanding of this new role is as follows:
>
> 2.1 I would act as an adviser to the P.P.E. factory on the introduction of new products to manufacturing.
>
> 2.2 I would act in an advisory capacity to the private communications divisions in Malaysia.
>
> 2.3 I would act as an adviser to the private communications division in Singapore." (ctd.)
>
> 3. I joined your group of companies as the General Manager of PPE in 1979. In my pre-employment interview with you it was made clear to me that I was joining your team as a Senior Line Manager primarily responsible for the manufacturing facility but also to take some active part in the marketing and commercial aspects of the groups telecommunications activity.
>
> 4. It is therefore with great regret that I find myself unable to continue in your employment as an advisor. I have thought long and deeply on this matter and have come to the conclusion that my style of management and personality are not matched to those attributes required in an advisory role. I am a "hard nosed" line manager and it is in this role that I am able to contribute at a high level. I need the motivation and responsibility that a Line Management position affords.
>
> 5. I spoke to you on this matter in late April 1981 and asked you if you would consider me for the vacant post of General Manager in Plessey Singapore. In the event that I was assigned to this position I told you I see no difficulty in acting from time to time (as the need arose) in an advisory capacity to the factory. I told you at that time that your previous plans for

me (i.e. Management Advisor) left me feeling unhappy and if that was all you could offer I would prefer to leave the company.

6. You asked me to think over my position and assured me that the company had no desire to see me leave. You also indicated that you would think over my thoughts and requests. You would then get together with me to see if there could be a different solution to my continued employment.

7. Several weeks have now past since that meeting and the subject has not been raised by you again. This leads me to the conclusion that you are unable to find me a suitable Line Management position based in your Singapore operation. (ctd)

8. My contract of employment does not terminate until end of August 1982. The period of notice required is six (6) months. This would mean that if April was used as my formal notification date then I would serve six months until the end of October 1981. I would prefer to leave the company at the end of August 1981, unless this causes you inconvenience.

9. I can only repeat that it is with a great sense of regret that I feel forced to resign. I believe the company is short of competent senior management. I think that during the course of the last two years I have proved myself to be both competent and hardworking. It is therefore with a heavy heart that I find that there appears to be no room for me in the line management hierarchy of your company.

The plaintiff says that he never spoke to Mr. Langlois after he had written the letter Ex P3, and furthermore Mr. Langlois never responded to his letter. However, in the middle of June he spoke to Mr. S.P. Quek on the matter of his leaving. He explained to Mr. Quek that he had applied for a couple of weeks' leave and would be travelling to the USA and Europe to seek alternative employment. Mr. Quek was quick to try and dissuade him from such action. Mr. Quek told him that the company needed him to stay on and that he (Quek) personally needed that he stay on. He and Mr. Quek had in the past worked very closely together on a number of projects relating to tenders and negotiations on insurance claims. Mr. Quek told him that he would discuss the matter with Mr. Langlois to work out an equitable solution. The plaintiff says that he did not doubt Mr. Quek's sincerity but he doubted Mr. Quek's ability to get a fast decision from Mr. Langlois. So he told Mr. Quek while he (Quek) was trying to sort out matters he would continue with his plan to go to Europe and America.

The plaintiff went on leave to America and Europe. He says he went to America to meet a Filipino friend Mr. Roberto Delgardo, a businessman. He was to arrange meetings for Mr. Delgardo to meet US manufacturers; and in the event that he left the defendant company, he was going to help Mr. Delgardo to establish a telecommunications company in Manila.

The plaintiff returned to Singapore in early part of August. The plaintiff says that he spoke to Mr. Quek on his return and explained to him that, if he (the plaintiff) was leaving the defendant company, it was likely that he would be working outside of Singapore and Malaysia. Mr. Quek was insistent that he gave up any idea of leaving. Mr. Quek told him that he had already spoken to Mr. Langlois and both of them were in agreement that the plaintiff should stay with the company. Mr. Quek assured him that only the details of a new position had to be worked out for him. The plaintiff says that he therefore gave up any idea of leaving the company and he told Mr. Quek that he would stay. He told Mr. Delgardo that he would be unable to join him.

The plaintiff says that on 9 September 1981, he was in Singapore and he went to the Plessey Office at Ruby Centre to see Mr. Quek. He went there for two reasons - the most important was that the company owed him money and he wanted to make sure that they agreed how much that they owed him; the second was to have a general discussion on his new position.

The plaintiff says that during the course of their meeting they agreed on the money outstanding and Mr. Quek assured him not to worry about his new position, that it would be sorted out very soon. He then had a meeting with Miss Margaret Tio Phaik Hoon who was to sort out the payment of money outstanding.

He was therefore shocked to receive on 7 October 1981, a letter dated 26 September 1981, from the defendants' office in Singapore signed by Miss Tio Phaik Hoon (Ex P4). The letter reads:

> Dear Mr. Auty,
>
> 1. We acknowledge receipt of your letter dated 26 May 1981 addressed to Mr. H.W. Langlois.
>
> 2. As agreed, your last day will be 31 October 1981 and we are now processing and finalising your monies due as well as clearing your personal account.
>
> 3. Attached please find a list of matters discussed during our meeting on 9 September 1981. Kindly advise if it is in order.
>
> 4. We thank you for your past services rendered and wish you success in your future undertakings.
>
> Yours faithfully,
> for: Pernas Plessey Electronics
> Sdn. Bhd.
>
> Sgd. Miss Tio Phaik Hoon

The plaintiff says that he was expecting a letter defining his new position in the company and this letter acknowledged receipt of a letter which he had written four months previously which he believed had been withdrawn. This letter said that he had agreed to cease employment on 31 October 1981, when he had made no such agreement. This letter suggested that he had agreed to the finalisation of monies listed in the annexure when he had not agreed. When he received the letter Ex P4 the annexure had the handwriting on it and it was not his handwriting.

The plaintiff says that when he received Ex P4 he immediately telephoned Mr. Quek. He asked Mr. Quek why he had not received a letter regarding his new position. Mr. Quek replied "don't worry, it is coming" and that the letter Ex P4 was a letter just to take care of accounts. Although he trusted Mr. Quek, the plaintiff says, he felt that he should respond to the letter which he did on 16 October 1981, in these terms:

> The Regional Personnel Executive
> Pernas Plessey Electronics Sdn. Bhd.
> c/o Chinese Chamber of Commerce Building
> Hill Street
> Singapore 6.
>
> **Attention: Ms P H Teo**
>
> Dear Madam,
>
> 1. With reference to your letter dated 26 September 1981 (your reference: 08/195/MFA, received 07 October 1981).
>
> 2. I note that your letter is to acknowledge the receipt of my letter dated 26 May 1981 addressed to Mr. H.W. Langlois.
>
> 3. It is unfortunate that the company is unable to offer me alternative employment and I therefore note that the company is terminating my employment effective 31 October 1981.

4. I have read your attachment listing monies outstanding and also refer to our recent conversation and subsequent conversations with your Mr. S.P.Quek. I therefore list what I now understand to be an agreed account of monies outstanding to me.

5. I expect the company to issue a cheque for M$25,254.09 to clear outstanding monies due prior to my leaving the company's employ.

6. The retention of October's salary (M$4,166.67) against Income Tax clearance you will no doubt forward to me in due course. (Ex P6)

He then received a letter dated 5 November 1981, from Plessey Malaysia Sdn. Bhd. (Ex P7) signed by Mr.Quek. The letter reads:

Dear Mr. Auty,

1. We confirm your appointment as Consultant on a short term to assist us in settling the consequential loss claim for our associate company, Pernas Plessey Electronics.

2. In this respect, we will bear costs of air tickets and will pick up your accommodation bills in Kuala Lumpur. Also, transport will be arranged in K.L. on your visits. Unless renewed this appointment will cease as at 31 December 1981.

He queried Mr. Quek as to why his appointment was with Plessey Malaysia and not with defendant company, why his services was restricted to 31 December 1981, why there was no mention of his salary. When pressed Mr. Quek said he was very sorry that he had not been able to work out the promised appointment with Mr. Langlois and that he could offer him no more.

The plaintiff then sought legal advice. His solicitors then wrote to the defendants and the reply was that the plaintiff's contract had been lawfully terminated and the defendants denied liability. He then instructed his solicitors to commence the present proceedings.

The defendants' contention is that it was the plaintiff who by the letter of 26 May 1981, (Ex P3) indicated that he wished to leave the services of the defendants as from the end of August 1981. Subsequently, upon negotiations being held between the plaintiff and the defendants, it was agreed, *inter alia*, by the letter of 26 September 1981, (Ex P4) from the defendants to the plaintiff, that the plaintiff would cease his employment with the defendants as from 31 October 1981. Furthermore, the defendants say Mr. S.P. Quek denies ever persuading the plaintiff to stay on as an employee of the defendants nor did Mr. Quek orally inform the plaintiff that he (Quek) would look into the matter and ensure that the plaintiff would be appointed to a comparable post to his former position as General Manager. The defendants contend that the plaintiff had resigned on his own accord by his letter Ex P3.

Now what does Mr. Quek say? He first came to know the plaintiff in 1979. The plaintiff was at that time the sales manager in Plessey U.K. and Singapore and Malaysia were part of his sales territory. He met the plaintiff when plaintiff came down on his first visit. The plaintiff was interested in a job with Plessey here. He then spoke to Mr. Langlois and as a result the plaintiff was offered a job with the defendants.

He used to meet the plaintiff whenever he went weekly to Kuala Lumpur in the course of his work. They became personal friends.

When the plaintiff commenced the present proceedings he (Quek) was still with Plessey. He left Plessey in March 1982 and since then he and his company have absolutely no dealings with the defendant company.

Sometime in 1981 there was a reorganisation of the defendant company. When Plessey Engineering Sdn. Bhd. increased their shareholdings in the defendant company, they wanted to bumiputarise the management of the defendant company. One of the results would be that the plaintiff would have to be down-graded and report to a Malay General Manager. The plaintiff was offered the post of adviser without any loss of monetary and other benefits. There was no intention to terminate the plaintiff's employment by giving him the required six months' notice due to the change in his status from General Manager to adviser. The plaintiff would continue to do the same job for which he was originally employed. All that happened was a change of designation from General Manager to one of adviser but no change in function or duty. The defendant company wanted the plaintiff to continue and assist the new Malay General Manager. At no stage did Mr. Langlois or any director wanted the plaintiff to resign.

Prior to May 1981 the plaintiff was not happy working for the defendant company. He had indicated that he would like to come to Singapore if he could and was thinking of resigning. Mr. Quek told the plaintiff that it would not be in his interest or the company's interest for him to resign. Inspite of Mr. Quek's advice the plaintiff tendered his resignation. He told the plaintiff that that was a very bad idea. The plaintiff still had outstanding work to do with the company. The plaintiff said his letter was in and if the Managing Director wanted him to reconsider then the Managing Director would have to make him an offer.

He did not at any stage, after the plaintiff's letter of resignation had been received, ensure the plaintiff that the plaintiff would be appointed to a comparable post to his former position as General Manager. He had no authority to make the offer nor did he make such an offer.

It was the Managing Director who had the final decision in hiring and dismissing an executive. Even he as Finance Director could not hire an accountant without the Managing Director's agreement. The plaintiff was in a technical position, as a finance person he (Quek) could not interfere with the technical area. He had no authority to hire the executive staff, he only had authority to hire junior staff.

He did not personally promise the plaintiff any job in the Plessey Group. He had nothing to do with Pernas Engineering. He exercised no authority in the defendant company; he was never an official of the defendant company.

As far as he was concerned the plaintiff had resigned of his own accord and for his own reasons. He, however, needed the plaintiff's technical assistance with regard to the defendant company's outstanding flood claims which the defendant company was negotiating with the insurance company. He spoke to the plaintiff about it. The plaintiff agreed to help. He was not an official of the defendant company so he had to make the offer in Ex P7 from Plessey Malaysia which was a joint-venture partner of the defendant company. Whenever he went to Kuala Lumpur to meet the insurance claim adjusters the plaintiff would fly up to join the meeting. When he left the Group in March 1982 the claims had not yet been settled.

Mr. Langlois confirmed that all engagements and dismissals would go to his office for his approval or rejection; that Mr. Quek was not involved in the defendant company in any way; that Mr. Quek was the financial director of Plessey Singapore and Plessey Malaysia and financial adviser to him personally.

Giving his account of the conversation with the plaintiff consequent to the reorganisation of the defendant company, Mr. Langlois said that he explained the full implications of this to the plaintiff and the plaintiff was subsequently offered a position as an adviser in the defendant company without any change or alteration in his salary or other conditions. The

plaintiff rejected that offer. The plaintiff was seeking other alternative employment in Singapore and there was nothing he could offer the plaintiff at that time.

Mr. Langlois said that "the plaintiff sets out very clearly in Ex P3 our discussions and I think that para. 5 sums up the whole situation". He also said that he did not at any time force the plaintiff to resign. On the contrary, he tried to get him to stay on to do the same job he was doing.

As regards the letter of the plaintiff Ex P3 Mr, Langlois said that he held that letter in abeyance in the hope that the plaintiff might wish to reconsider his resignation and remain with the defendant company as an adviser. Mr. Langlois said that he never offered the plaintiff any other job with any one of his organisations. His only offer was that of adviser in the defendant company, which the plaintiff would not accept.

Subsequently Ex. P3 was passed to the personnel executive to accept plaintiff's resignation. Subsequently he received the letter Ex P4 from Miss Teo. As far as he was concerned the plaintiff was leaving the defendant company as per the letter.

Mr. Langlois said that he had seen the letter Ex P7 written by Mr. Quek to the plaintiff confirming the plaintiff's appointment as consultant to Plessey Malaysia on a short term. Mr. Quek would require his clearance for the appointment of the plaintiff. He saw the letter, marked it at the top right hand corner "f" which signifies that he had seen it, file it and he did not want to be concerned with it.

Mr. Langlois said that he did not think that he gave the plaintiff the impression that the plaintiff's letter of resignation had been withdrawn.

On the reorganisation of the defendant company Mr. Langlois said that he himself was asked to resign as the Managing Director of the defendant company, which he did, and his position was taken over by a bumiputra and he became adviser.

Miss Margaret Tio Phaik Hoon was in 1981 the personnel officer with Plessey Singapore and also acted when the occasion required as personnel officer of the defendant company and of Plessey Malaysia.

Miss Tio said that she knew the plaintiff and was well-versed with the plaintiff's employment with the defendant company. The letter of the plaintiff to Mr. Langlois Ex P3 was referred to her by Mr. Langlois for action to be taken. She was instructed that the plaintiff was going to resign and that at the expiry of the six months' notice the plaintiff was to be paid all the termination benefits that were due to him. She was not told as to why the plaintiff was leaving. The impression she got was that the plaintiff was resigning of his own volition.

Miss Tio said that Ex P3 was sent to her for action sometime in September 1981. She had a meeting with the plaintiff on 9 September 1981. At the meeting they went through what was due to the plaintiff. Eventually a number of things were decided between the two of them which resulted in her letter to the plaintiff Ex P4.

Miss Tio said that at the meeting the plaintiff did not indicate that there was more money due to him. He did not give her the impression that his letter Ex P3 had been withdrawn.

She received the letter Ex P6 from the plaintiff and she sent a copy of it to Mr. Langlois and a copy would have been sent to the Kuala Lumpur office and would have been dealt with there by Mr. Robert Choong who was in charge of finance. After that she had no further dealings with the plaintiff.

The main issue in this case is whether the plaintiff resigned of his own accord or whether his employment was terminated by the defendants.

Plaintiff's Counsel contends that the plaintiff was forced to resign and that a resignation under compulsion is no resignation. The evidence does not support Counsel's contention. The plaintiff in his letter Ex P3 expressed his feeling that, due to the changed circumstances, he felt forced to resign, not that he was forced to resign by Mr. Langlois. The plaintiff was not happy with the post of adviser and was naturally disappointed that he was not offered the vacant post of General Manager in Plessey Singapore. He was anxious to come to live in Singapore where his fiancee was. This was one of the main reasons for the plaintiff to tender his resignation. Mr Delgardo said that the plaintiff had at no time told him that he (the plaintiff) was forced to resign from the defendant company and he had the impression that the plaintiff in early 1981 was not happy working for the defendant company and wanted to start his own business. The plaintiff had the clear intention to leave the defendant company; he gave the required length of notice and said that he would serve the company through the period of the notice. He said the reason why he wrote the letter Ex P3 was to record in writing the conversation he had with Mr. Langlois as he did not want it to be misunderstood that he was prepared to continue in a different role. He also said that he had no problem in leaving the company and was in fact happy to tender his resignation and would prefer not to have to serve out the full six months' notice required. There can be no doubt that the plaintiff tendered his resignation of his own accord and for his own reasons.

The plaintiff pleaded that Mr. Quek verbally persuaded him to stay on as an employee of the defendants and orally informed the plaintiff that he (Quek) would look into the matter and ensure that the plaintiff would be appointed to a comparable post to his former position as General Manager but nothing came out of this.

Is there any truth in the plaintiff's allegations? The whole case of the plaintiff is based solely on the verbal discussions between himself and Mr. Quek over a period of 4 months from 26 May 1981, to 26 September 1981.

The plaintiff was involved with a Singapore registered company, Tie-Tech Pte. Ltd., as early as 24 August 1981, whilst he was still employed by the defendant company and obtained a professional visit pass to work in Singapore as Managing Director of the company from October 1981 to October 1984. The other person involved in the company was the plaintiff's fiancee who was previously employed by Plessey Singapore. The plaintiff was actively involved with the company from the date of its incorporation in August 1981 and he became its Managing Director from 1 September 1981.

Mr. Quek has categorically denied the plaintiff's allegations. There is no doubt that Mr. Quek could not offer the plaintiff another comparable job in the defendant company. The plaintiff himself was aware that Mr. Quek had limited powers as he said "However, I did doubt his (Quek) ability to get a fast decision from Mr. Langlois", and so he proceeded to Europe and America during his leave, as he had planned, to seek alternative employment.

The plaintiff and Mr. Quek were close friends and Mr. Quek said that he could have persuaded the plaintiff to stay on in his personal capacity as a friend, but not on behalf of the defendant company as he was never an employee of the defendant company nor a director. But he did ask the plaintiff to speak to Managing Director to try and work out something.

Counsel for the plaintiff says that the letter Ex P7 written by Mr. Quek confirming the appointment of the plaintiff as Consultant serves to confirm the plaintiff's version that he was promised an alternative comparable post. The plaintiff was appointed Consultant by

Plessey Malaysia and not by the defendant company. Mr. Quek said that in fact the plaintiff was appointed as his Consultant. The defendant company was not a party to this appointment and in fact according to Mr. Quek the defendant company was not aware of this appointment.

Counsel for the plaintiff says that the defendant company did not acknowledge receipt of plaintiff's letter Ex P3 or reply to it promptly as should have been the case, with the result that after the plaintiff had spoken to Mr. Quek and was assured of another job, the plaintiff decided to stay and believed that his letter of resignation had been withdrawn.

There is no legal obligation for the defendant company to accept, whether expressly or impliedly, the plaintiff's resignation as General Manager from the defendant company. A withdrawal of resignation must be accepted by the employer. There is no documentary or oral evidence of the withdrawal of resignation by plaintiff himself neither is there documentary or oral evidence of the acceptance of the withdrawal of resignation by the defendant company.

On the evidence, the probabilities are that Mr. Quek did not ensure the plaintiff that he would be appointed to a comparable post in the defendant company, nor had plaintiff been misled into believing that.

The plaintiff admitted that he voluntarily resigned from the defendant company and that he was paid up to 31 October 1981. The plaintiff accepted the monies given to him by the defendant company upon his resignation and made no complaints at all. He admitted that he did not inform the defendant company or Miss Margaret Tio that he reserved the right to bring further claims. The evidence is that Miss Andrea Chan Lai Sim, the plaintiff's secretary in 1981, was instructed by telephone by the plaintiff, who was then in Singapore, to bank the cheque and sign the payment voucher on his behalf when the cheque for the plaintiff was received from the accounts department. Sometime in November 1981 Miss Chan received a cheque for $9,015.34. After she had banked the cheque she informed the plaintiff that she had accepted the cheque on his behalf and had signed the payment voucher. On the payment voucher was written "In full and final settlement of all monies due". Plaintiff asked what was the amount of the cheque and was told it was $9,015.34. The plaintiff never queried her about the insufficient amount in the said cheque. The plaintiff had accepted the sum of $9,015.34 as full and final settlement due upon his resignation.

The plaintiff's claim is dismissed with costs.

Also found at [1988] 1 CLJ 729